



State Bar of Michigan

Michael Franck Building
306 Townsend Street
Lansing, Michigan 48933-2083
Telephone: (517) 346-6300 or (800) 968-1442
Fax: (517) 482-6248

RECEIVED

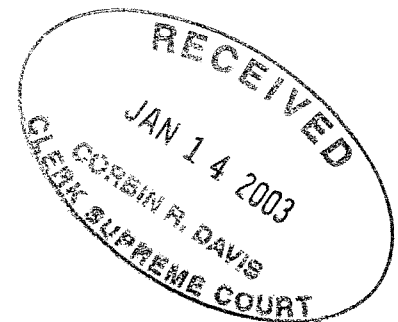
JAN 15 2003

OFFICE OF
THE CHIEF JUSTICE

January 9, 2003

Corbin R. Davis
Office of the Clerk
Supreme Court of Michigan
P.O. Box 30052
Lansing, Michigan 48909-7552

Re: Comments on Proposed Electronic Filing Standards
Michigan Supreme Court Order 2002-37



Dear Mr. Davis:

We write on behalf of the State Bar of Michigan's Access to Justice Task Force, the Access to Justice Work Group of the Open Justice Commission and the Standing Committee on Legal Aid. Membership lists for each group are attached.

Enclosed are the groups' joint comments regarding the proposed electronic filing standards currently being considered by the Court. It is our understanding that the deadline for the submission of these comments has been extended until January 16, 2003.

Thanks for this opportunity to participate in the process. Please feel free to contact either of us should you have questions or require anything further.

Sincerely,

Charlotte Johnson
Chair, Access to Justice Task Force
(734) 615-0019
chj@umich.edu

Terri L. Stangl
Chair, Access to Justice Committee of the Open
Justice Commission
Chair, Legal Aid Committee
(989) 755-3120
tstangl@ccj-mi.org

Enclosures





State Bar of Michigan

Michael Franck Building
306 Townsend Street
Lansing, Michigan 48933-2083
Telephone: (517) 346-6300 or (800) 968-1442
Fax: (517) 482-6248

MEMORANDUM

TO: Supreme Court of Michigan

FROM: Access to Justice Task Force
Open Justice Commission – Access to Justice Workgroup
Standing Committee on Legal Aid

RE: Comments on Proposed Electronic Filing Standards
Michigan Supreme Court Order 2002-37

DATE: January 9, 2003

Introduction

Thank you for allowing the above entities within the State Bar the opportunity to comment on the proposed Standards for Electronic Filing Processes. Our aim, in reviewing the standards, was to identify aspects of the proposal that could potentially limit the ability of special populations to access our courts. We use the term "special populations" to mean those litigants who are non-represented ("pro se"), especially those who are illiterate, with limited English proficiency (LEP), and persons with disabilities. Attorneys with disabilities may also need special accommodations.

We recognize the enormous potential of electronic filing processes to create significant benefits for the courts, lawyers and litigants. It is also clear that, for certain classes of filers/potential users, an electronic filing system might magnify currently existing barriers to meaningful participation in the judicial process. Such barriers include costs, unfamiliarity with process, lack of assistance from courthouse staff and the intimidating nature of the process. An electronic filing system also potentially creates new barriers, such as lack of computer access and lack of technical support.



The “digital divide”¹ is a real and well-documented² problem. As more and more aspects of meaningful participation in our society become digitized, we are disenfranchising those without the means to make effective use of technology. We do not believe that the answer is to try to halt the digital revolution, but rather to build digital systems that ensure all sectors of society can participate and thus effectively bridge the divide one system at a time.

The justice system is such an important part of citizenship that it is imperative to digitize it in a way that promotes equal access to justice for all. For the purposes of these standards we think this means more than just ensuring that a **mandatory** e-filing system is accessible, but also means ensuring that **any** e-filing system provides meaningful access to all.

We suggest the following be incorporated into any standards or codifications promulgating electronic filing processes. Some, but not all of these suggestions, are at least partially addressed by the proposed standards, particularly Standard 1.1L:

Standard 1.1L Addressing the Special Needs of Users

Current Standard:

In developing and implementing electronic filing, courts will consider the needs of indigent, self-represented, non-English speaking, or illiterate persons and the challenges facing persons lacking access to or skills in the use of computers.

We suggest that this standard be more directive to ensure meaningful access to this new digital justice system to all users.

To that end we recommend changing the language of the standard as follows:

*In developing and implementing electronic filing, courts ~~will consider~~ **must provide for** the needs of indigent, self-represented, ~~non-English speaking~~, or illiterate persons, **those of limited English proficiency** and the challenges facing **persons with disabilities** or persons lacking access to or skills in the use of computers.*

The comments to the standard could also be more prescriptive. We recommend the following changes:

¹ The “gap between those people and communities who can make effective use of information technology and those who cannot”. Digital Divide Network’s *Digital Divide Basics* - <http://www.digitaldividenetwork.org/content/sections/index.cfm?key=2>

² See *Falling Through the Net*, a Dept. of Commerce study on the extent of the digital divide in this country (<http://www.ntia.doc.gov/ntiahome/fttn00/contents00.html>).

The intent of this standard is for courts to take ~~reasonable~~ steps to ensure that electronic filing systems promote, rather than create barriers to, public access to the courts.

*Courts ~~can~~ **shall** ensure that electronic filing processes comply with any requirements imposed by the Americans with Disabilities Act or the Rehabilitation Act. They ~~can~~ **shall** ensure that websites used for electronic filing are “Bobby compliant” (i.e., that they comply with the Bobby Worldwide guidelines developed by the Center for Applied Special Technology, a non-profit organization devoted to ensuring access to technology for persons with disabilities. See <http://www.cast.org/Bobby> “Bobby compliance” ensures that a website’s content is accessible by a person using special readers for persons with sight and hearing disabilities.*

*Courts ~~can~~ **shall** waive any fees associated with electronic filing or with electronic access to electronic records for persons who are not able to pay them. They ~~can~~ **shall** require that private sector service providers operating electronic filing systems for the court make those services available at no cost to indigent persons or self-represented persons without regards to a means test.*

*Courts ~~can~~ **shall** ensure that their electronic filing applications are as simple and easy to use as possible, through user testing processes that involve members of the public and self represented litigants as well as lawyers and their staff.*

We recommend that all references to “non-English speaking” in this standard and commentary be changed to “those with limited English proficiency”. LEP is the term specifically recognized under Title VI and within Department of Justice materials discussing implementation of the Civil Rights Act of 1964.

We agree with the commentary in Standard 1.1L that persons who are illiterate, of limited English proficiency, or with disabilities “will require significant amounts of personal assistance from court staff or other community resources” in order to use e-filing successfully. Bilingual support staff are especially essential in providing support services to those with limited English proficiency. Similarly, court staff should be trained to meet the unique needs of other special populations. Because of the burden that this may place on local court personnel, we believe it would desirable to allow these populations the option of paper filing. Courts, of course, could use scanners to convert these paper documents to electronic form for more uniform storage and retrieval.

We understand that systems that ensure equal access to justice may be significantly more expensive. It is our hope that these costs can be shared.

Standard 1.3B Mandatory Electronic Filing Processes

Current Standard:

Court rules may mandate use of an electronic filing process if the court provides a free electronic filing process, the court allows for the exceptions needed to ensure access to justice for indigent, disabled or self-represented litigants, the court provides adequate advanced notice of the mandatory participation requirement, and the court (or its representative) provides training for filers in the use of the process.

We recommend that “limited English proficiency” litigants be added to the list of exceptions for the reason listed above. We also recommend that the phrase ‘ persons with disabilities’ be substituted for the word “disabled”, since that is the phrasing that seems to be generally preferred by those with disabilities.

*Court rules may mandate use of an electronic filing process if the court provides a free electronic filing process, the court allows for the exceptions needed to ensure access to justice for **litigants who are indigent or self-represented or who have disabilities or limited English proficiency**, the court provides adequate advanced notice of the mandatory participation requirement, and the court (or its representative) provides training for filers in the use of the process.*

We agree strongly that any electronic filing process should be non-mandatory for all unrepresented individuals. In addition to the “indigent, disabled or self-represented litigants”, the court rules should permit exceptions for persons who can not read English and those with limited English Proficiency (oral or writing skills). As explained earlier in connection with Standard 1.1L, these individuals may require greater assistance from courthouse personnel.

Waiver of Fees and Surcharges

1. **The e-filing standards do not provide courts with guidance on how to handle waiver of fees.** Although the proposed e-filing standards provide in Standards 1.1L and 1.1J that an e-filing system must assure that indigent persons can waive fees and any surcharges should be waived in an e-filing system, the standards do not specify how persons, who cannot pay to access the e-filing system, will be determined eligible for a waiver of fees.

MCR 2.002 requires courts to waive fees for persons on public assistance. The current practice in most courts is for clerks to authorize a waiver of fees if the indigent party attests to the receipt of public assistance. In other cases, the case is accepted by the court pending a ruling by a judge on whether fees should be waived based on an affidavit of indigency. (See Form MC 07). Unless the standards make it clear that courts should not require e-filing of

affidavits of indigency and requests for waivers of fees, or unless such waivers can be obtained as part of the registration process (see below) for those indigent litigants who do choose e-filing, the process will generate an unacceptable result: an indigent litigant cannot access the court for a ruling on whether he or she can access the court.

2. The proposed e-filing rule envisions a process by which users pay both a filing fee and a potential surcharge for use of the e-filing system. **If charges are to be contemplated, we recommend the "hybrid" model outlined in Standard 1.1J.** We find this model particularly appealing because the model provides for free electronic filing processing and limited, free support services. More extensive support services could be offered to users for a fee.
3. **Assuming registration is required to access an electronic filing system, the registration process should be simple and free of charge (1.1G).** We recommend that any registration procedure include a procedure and instructions for obtaining waiver of fees. This could be done automatically for persons who verify that they are on public assistance, or through court order for those not on public assistance but considered indigent. Waiver of fees should also constitute an automatic waiver of any surcharges.

Conversion of Documents to Electronic Format

Standard 1.1D Document Format

Current Standard:

Courts will require electronic documents to be submitted in a format that is renderable, and, when possible, searchable and tagged. Courts will only require formats for which software to read and write documents is available free for viewing and is available free or at a reasonable cost for writing and printing.

Low-income users will probably not be able to purchase special software for creating court documents. Therefore, we recommend the following change to this standard:

*Courts will require electronic documents to be submitted in a format that is open source, renderable, and, when possible, searchable and tagged. Courts will only require formats for which software to read and write documents is available **for free for viewing** and ~~is available free or at a reasonable cost for writing and printing.~~*

Section 3.3.2 of the proposed standards contemplates that a number of court documents must be converted to electronic format before filing, e.g. affidavits, exhibits, etc. Unrepresented litigants, especially those of modest means, will not necessarily have access to scanning equipment, which may be necessary. Many litigants and some attorneys may not have access to imaging software such as adobe acrobat. If courts require conversion of such documents to electronic form, computers and user support should be made available in courthouses and, where feasible, other public facilities. We recommend that provision should also be made for free access to scanners and computers with imaging software for use by the indigent and other special population members who would otherwise not have access to such devices and software.

We do not believe that these changes will preclude the use of PDF as a document format. The Legal Services Computer Committee has identified a number of free programs currently exist to convert a text file to PDF:

PDF995 - <http://www.pdf995.com/>

Free PDF - <http://www.webxd.com/zipguy/freepdf.htm>

Free easy PDF - http://www.visagesoft.com/easypdf/easypdf_free.php

Privacy

Section 3.7 of the proposed standards describes several options for shielding various data fields. We agree that courts need flexibility. However, in the age of identity theft, we believe that special emphasis should be placed on the need to protect privacy, especially with regard to social security numbers and other account numbers. In addition, information about addresses and medical conditions should not be readily available to all through the Internet. In domestic violence situations, for example, it can be critical to keep an assailant from seeing a victim's address. E-filing systems should include methods to redact this information from electronic files. New standards may be instituted to provide for the restriction of electronic access to causes of action that involve particularly sensitive facts. For example, the Federal District Court for the Western District restricts access to Social Security Appeals Cases to counsel of record.

Implementation of E-filing

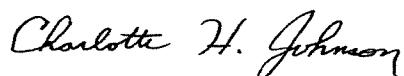
We agree with the general intent of Standard 1.1L, which calls for courts to "consider the needs of indigent, self-represented, non-English speaking or illiterate persons" when "developing and implementing electronic filing." However, as stated above, we recommend that the standard be amended to use the phrase "limited English proficient" instead of "non-English speaking." The standards should require trial courts to set up advisory bodies or other meaningful methods of

involving representatives from special populations in the courts' implementation planning processes. In addition, it is recommended that input be sought from representatives of these special populations prior to implementing court rules creating an e-filing system.

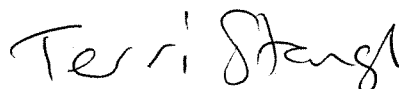
Limited pilot projects should be undertaken to test the impact of e-filing on special populations. Standard 1.1L suggests that courts develop user-testing processes to help "ensure that electronic filing applications are as simple and easy to use as possible". We agree with that and would add that such testing procedures should also be designed to identify and address any barriers to use for these special unrepresented populations. We further recommend that representatives of these special populations be involved in the testing and evaluation process.

Conclusion

We hope these comments are helpful to the Court in determining whether and in what form to adopt the proposed standards. Please contact the representatives listed below if you have questions or comments.



Charlotte Johnson
Chair, Access to Justice Task Force
(734) 615-0019
chj@umich.edu



Terri L. Stangl
Chair, Access to Justice Committee of the Open
Justice Commission
Chair, Legal Aid Committee
(989) 755-3120
tstangl@ccj-mi.org

Charlotte H. Johnson

Chairperson
Assistant Dean of Students
University of Michigan Law School
625 S State St # 311
Ann Arbor, MI 48109-1215
Phone: (734) 615-0019 FAX: (734) 647-5226

Scott S. Brinkmeyer

Member
Mika, Meyers, Beckett & Jones, PLC
900 Monroe Ave NW
Grand Rapids, MI 49503-1423
Phone: (616) 632-8000 FAX: (616) 632-8002

Evanne L. Dietz

Member
Butzel Long, PC
100 Bloomfield Hills Pkwy Ste 200
Bloomfield Hills, MI 48304-2949
Phone: (248) 258-1616 FAX: (248) 258-1439

Robert Fair Gillett

Member
Legal Services of South Central Michigan
420 N 4th Ave
Ann Arbor, MI 48104-1104
Phone: (734) 665-6181 FAX: (734) 665-2974

Nancy Lindman

Member
901 Sunset Ln
East Lansing, MI 48823-3147
Phone: (517) 974-0746

Margaret J. Nichols

Member
Nichols, Sacks, Slank & Sendelbach, PC
121 W Washington St Ste 300
Ann Arbor, MI 48104-1300
Phone: (734) 994-3000 FAX: (734) 994-1557

Linda K. Rexer

Member
Executive Director
Michigan State Bar Foundation
306 Townsend St Fl 4
Lansing, MI 48933-2012
Phone: (517) 346-6400 x6401 FAX: (517) 371-3325

John T. Berry

Member
Executive Director
State Bar of Michigan
306 Townsend St
Lansing, MI 48933
Phone: (517) 346-6331 FAX: (517) 482-6248

Nancy J. Diehl

Member
Wayne County Prosecuting Attorneys Office
1441 Saint Antoine St #1266
Detroit, MI 48226-2311
Phone: (313) 224-5742 FAX: (313) 224-6435

John D. Ferry, Jr.

Member
Deputy Court Administrator
State Court Administrators Office
309 N Washington Sq
Lansing, MI 48933
Phone: (517) 373-0130

John E. Johnson, Jr

Member
Deputy Executive Director
Legal Aid and Defender Association
645 Griswold St Ste 2400
Detroit, MI 48226-4201
Phone: (313) 964-4111 x6344 FAX: (313) 967-9299

James R. Neuhard

Member
State Appellate Defender Office
645 Griswold St Ste 3300
Detroit, MI 48226-4215
Phone: (313) 256-9833 FAX: (313) 965-0372

Paul D. Reingold

Member
Michigan Clinical Law Program
U Of Michigan Law School
Ann Arbor, MI 48109-1215
Phone: (734) 763-4319 FAX: (734) 764-4702

Terri L. Stangl

Member
Center for Civil Justice
320 S Washington 2nd Fl
Saginaw, MI 48607
Phone: (989) 755-3120 FAX: (989) 755-3558

Reginald M. Turner, Jr

Member
Clark Hill PLC
500 Woodward Ave Ste 3500
Detroit, MI 48226-3485
Phone: (313) 965-8318 FAX: (313) 965-8252

Kate Birnbryer White

Member
Legal Hotline for Michigan Seniors
221 N. Pine St.
Lansing, MI 48933-1021

Kimberly M. Cahill

Associate Member
Schoenherr & Cahill, PC
24735 Van Dyke Ave
Center Line, MI 48015-2314
Phone: (586) 757-0733 FAX: (586) 757-2968

Donica Thomas Varner

Associate Member
University of Michigan
4010 Fleming Bldg
Ann Arbor, MI 48109
Phone: (734) 615-7954 FAX: (734) 615-8937

Karen Williams

State Bar Staff
Sections and Committees Coordinator
State Bar of Michigan
306 Townsend St
Lansing, MI 48933-2012
Phone: (517) 346-6367 FAX: (517) 482-6248

Lorraine H. Weber

Member
State Bar of Michigan
2225 Burns St
Detroit, MI 48214-2895
Phone: (313) 822-2874 FAX: (313) 822-4385

Paula M. Zimmer

Member
Oakland-Livingston Legal Aid
35 W Huron 5th Fl
Pontiac, MI 48342
Phone: (248) 456-8861 FAX: (248) 456-8869

Mark P. Fancher

Associate Member
Sugar Law Center for Economic & Social Justice
733 Saint Antoine St Fl 3
Detroit, MI 48226-2936
Phone: (313) 962-6540 FAX: (313) 962-4492

Candace A. Crowley

State Bar Staff
Manager, Access To Justice
State Bar of Michigan
306 Townsend Street
Lansing, MI 48933
Phone: (517) 346-6319 FAX: (517) 482-6248



STATE BAR OF MICHIGAN
OPEN JUSTICE COMMISSION

ACCESS TO JUSTICE COMMITTEE

COMMISSIONERS

Hon. William J. Caprathe
18th Circuit Court
Bay County Building
1230 Washington Ave., Suite 250
Bay City, MI 48708-5756
989 895-4267
Fax: 989 895-2090
bcaprathe@netscape.net

John D. Ferry, Jr.
State Court Administrative Office
309 North Washington Square
Lansing, MI 48933
517 373-2222
Fax: 517 373-2112
ferryj@jud.state.mi.us

Hon. Claudia House Morcom
9000 E. Jefferson, Apt. 1410
Detroit, MI 48214
313 331-0692
Fax: None
e-mail: None

COMMITTEE MEMBERS

Michelle Bilger
Court Administrator
52-1 District Court
48150 Grand River Ave.
Novi, MI 48374-1222
248 305-6080
Fax: 248 305-6080
bilgerm@co.oakland.mi.us

Pam Creighton
2806 Averill Drive
Lansing, MI 48911
517 393-0988
Fax: None
creightonp53@yahoo.com

William Lawrence
Administrator of Human Resources
3rd Circuit Court
720 Coleman A. Young Municipal Center
Detroit, MI 48221
313 224-7018
Fax: 313 237-1177
william.lawrence@3cc.co.wayne.mi.us

Kenneth Lee Lewis
Plunkett & Cooney, P.C.
535 Griswold St Ste 2400
Detroit, MI 48226-3684
313 983-4790
Fax: 313 983-4350
lewisk@plunkettlaw.com

Terri L. Stangl
Executive Director
Center for Civil Justice
320 S. Washington Avenue 2nd Floor
Saginaw, MI 48607
517 755-3120
Fax: 517 755-3558
tstangl@ccj-mi.org

Lisa Timmons
Mediation Tribunal Association
Millender Center
340 E. Congress, Suite 300
Detroit, MI 48226
313 224-5606
Fax: 313 967-3623
lisa.timmons@3cc.co.wayne.mi.us

Roger L. Wolcott
Wolcott, Megel, Golden & Ross
1301 W Long Lake Rd #305
Troy, MI 48098-6340
248 267-0800
Fax: 248 267-0820
roger.wolcott@stpaul.com

Paula M. Zimmer
Executive Director
Oakland-Livingston Legal Aid
35 W. Huron, 5th Floor
Pontiac, MI 48342
248 456-8861
Fax: 248 456-8869
pzimmer@mlan.net

Terri L. Stangl

Chairperson
Center for Civil Justice
320 S Washington 2nd Fl
Saginaw, MI 48607
Phone: (989) 755-3120 FAX: (989) 755-3558

Michael J. Blau

Member
Program Wide Managing Attorney
Legal Services of South Central Michigan
420 N 4th Ave
Ann Arbor, MI 48104-1104
Phone: 734-665-6181 x11 FAX: 734-665-2974

Evanne L. Dietz

Member
Butzel Long, PC
100 Bloomfield Hills Pkwy Ste 200
Bloomfield Hills, MI 48304-2949
Phone: (248) 258-1616 FAX: (248) 258-1439

Pamela R. Galloway

Member
Wayne State University
656 W Kirby 4249 FAB
Detroit, MI 48202
Phone: (313) 577-2268 FAX: (313) 577-8877

David M. Huntley

Member
Alpena County Friend of the Court
719 W Chisholm St Ste 1
Alpena, MI 49707-2452
Phone: (989) 356-0574 FAX: (989) 356-6490

Christine M. Kooiman

Member
Western Michigan Legal Services
901 Port St
PO Box E
Saint Joseph, MI 49085-1116
Phone: (269) 983-6363 FAX: (269) 983-1916

Kenneth C. Penokie

Member
Legal Services of Northern Michigan
806 Ludington St
Escanaba, MI 49829-3828
Phone: (906) 786-2303 FAX: (906) 786-4041

Miriam Jane Aukerman

Member
Western Michigan Legal Services
89 Ionia Ave NW Ste 400
Grand Rapids, MI 49503-3034
Phone: (616) 774-0672 x114 FAX: (616) 774-2412

Lorray S.C. Brown

Member
Michigan Poverty Law Program
611 Church St Ste 4A
Ann Arbor, MI 48104-3000
Phone: (734) 998-6100 x32 FAX: (734) 998-9125

Mark J. Andrew Flory

Member
Legal Services of South Central Michigan
3490 Belle Chase Way Ste 50
Lansing, MI 48911-4257
Phone: (517) 394-2985 FAX: (517) 394-4276

Mary Herr

Member
Legal Aid & Defender Assoc., Inc.
645 Griswold St # 2600
Detroit, MI 48226-4105
Phone: (313) 964-4111 x6350 FAX: (313) 887-5543

Kyle R. Kitt

Member
Legal Services of Eastern Michigan
148 E Main St
Midland, MI 48640-6500
Phone: (989) 832-7987 FAX: (989) 832-5756

Richard W. McHugh

Member
PO Box 369
Dexter, MI 48130-0369
Phone: (734) 426-6773 FAX: (734) 426-6774

Thomas K. Thornburg

Member
Farmworker Legal Services
PO Box 219
Bangor, MI 49013-0219
Phone: (616) 427-1622 FAX: (616) 427-2862

Mary E. Drolet

Associate Member
Western Michigan Legal Services
1109 Bell Rd
Niles, MI 49120-4333
Phone: (269) 684-2920 FAX: (269) 684-1045

Lynda S. Krupp

Associate Member
Managing Attorney
Legal Aid & Defender
645 Griswold St Ste 2600
Detroit, MI 48226-4105
Phone: (313) 964-4111 x16351 FAX: (313) 887-5543

Joelynn T. Stokes

Associate Member
J.T. Stokes & Associates, PC
23880 Woodward Ave
Pleasant Ridge, MI 48069-1133
Phone: (248) 291-0500 FAX: (248) 291-0505

Gregory P. Conyers

State Bar Staff
Program Administrator
State Bar of Michigan
306 Townsend St
Lansing, MI 48933-2012
Phone: (517) 346-6358 FAX: (517) 482-6248

Amanda L. Howe

Associate Member
Legal Aid & Defender Assoc., Inc.
825 Nightingale St
Dearborn, MI 48128-1563
Phone: (313) 562-6924 FAX: (313) 562-6724

Karen Lewthwaite

Associate Member
Legal Services of South Central Michigan
180 W Michigan Ave Ste 800
Jackson, MI 49201-1379
Phone: (517) 787-6111 FAX: (517) 787-5805

Kathryn M. Day

Commissioner Liaison
Lawquest, Inc.
27350 Southfield Rd # 119
Lathrup Village, MI 48076-3409
Phone: (248) 539-8988